

46 Am. Jur. 2d Judges § 251

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Judges

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XII. Special, Substitute, or Pro Tem Judges

D. Objection to Authority

§ 251. Waiver of objection to substitute judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  19

Generally, an objection to the appointment or authority of a special or substitute judge may be waived, either by an express waiver¹ or by failing to object,² unless the judge's actions are void.³ Where a defendant does not object to an irregularity in the appointment of a special judge, the defendant accepts the appointment, submits to the jurisdiction, and waives the irregularity.⁴

Waiver has been found where no objection was made until after the movant received an unfavorable ruling,⁵ where a party procured affirmative relief at the hands of an interchange judge,⁶ or where a party agreed to have the case tried by a particular special, substitute, or pro tem judge.⁷

On the other hand, a jurisdictional defect in the appointment of a special judge results in a void judgment which may be attacked at any time⁸ and cannot be waived,⁹ although some authority holds that even a constitutional challenge can be waived.¹⁰

A party does not waive the right to object to a special judge by having previously agreed to a prior appointment of the judge.¹¹

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Footnotes

- 1 [Whited v. State](#), 645 N.E.2d 1138 (Ind. Ct. App. 1995); [State v. Sagarese](#), 34 N.J. Super. 126, 111 A.2d 777 (App. Div. 1955).
- 2 [Gibson v. State](#), 334 Md. 44, 637 A.2d 1204 (1994) (knowing failure to object is equivalent to consent); [Buchanan v. Buchanan](#), 167 S.W.3d 698 (Mo. 2005).
- 3 [In re General Elec. Capital Corp.](#), 63 S.W.3d 568 (Tex. App. El Paso 2001).

4 Bostic v. State, 980 N.E.2d 335 (Ind. Ct. App. 2012).
5 Kentucky Utilities Co. v. South East Coal Co., 836 S.W.2d 407 (Ky. 1992).
6 Martin v. Dowling, 204 Tenn. 34, 315 S.W.2d 397 (1958).
7 Chandler v. Chandler, 92 Kan. 355, 140 P. 858 (1914); Washoe Copper Co. v. Hickey, 46 Mont. 363, 128
P. 584 (1912); State ex rel. Warren v. Sixth Judicial District Court in and for Humboldt County, 57 Nev.
214, 61 P.2d 6 (1936).
8 Frad v. Kelly, 302 U.S. 312, 58 S. Ct. 188, 82 L. Ed. 282 (1937); Mitchell v. Kitsap County, 59 Wash. App.
177, 797 P.2d 516 (Div. 2 1990).
9 National Bank of Washington, Coffman-Dobson Branch v. McCrillis, 15 Wash. 2d 345, 130 P.2d 901, 144
A.L.R. 1197 (1942).
10 Foundation Telecommunications, Inc. v. Moe Studio, Inc., 341 Ark. 231, 16 S.W.3d 531 (2000).
11 NCF, Inc. v. Harless, 846 S.W.2d 79 (Tex. App. Dallas 1992).

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